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Supreme Court of the United States

October Term, 1950

No. 12

WILLIAM A. PRICE,

Petitioner,

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Supreme Court of the United States

October Term, 1960

No.

WILLIAM A. PRICE,

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UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

William A. Price respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on June 18, 1960, affirming petitioner's conviction in the United States District Court of the District of Columbia for contempt of Congress under 2 U. S. C. 192.

Opinions Below

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 138-142) has not yet been reported; it appears as Appendix A to this petition, *infra*, p. 15.

Jurisdiction

The judgment of the Court of Appeals was entered on June 18, 1960 (R. 143, Appendix B, *infra*, p. 20). On July 13, 1960, Mr. Justice Black extended the time to file this petition to August 17, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether Senate Resolution 366, 81st Cong., 2nd Sess., the charter of authority of the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate (hereafter "the Subcommittee"), is so vague as to invalidate the Subcommittee's power to compel testimony in the First Amendment area.

2. Whether, when petitioner failed to answer the questions as to which he has been convicted for contempt, the Subcommittee was engaged on a "topic under inquiry", sufficiently identified and of which petitioner was adequately apprised, within the requirements formulated by this Court in *Watkins* v. *United States*, 354 U. S. 178; *Sweezy* v. *New Hampshire*, 354 U. S. 234; and *Barenblatt* v. *United States*, 360 U. S. 109.

3. Whether, in any event, the Government sustained the burden imposed on it by this Court in *United States* v. *Rumely*, 345 U. S. 41, and *Sinclair* v. *United States*, 279 U. S. 263, of showing that there was a particular "topic under inquiry" on which the Subcommittee was at that time engaged.

4. Whether the Government sustained the burden imposed on it by this Court in *Barenblatt* v. *United States*, *supra*, and *Sweezy* v. *United States*, *supra*, of showing why petitioner's right of privacy must yield to subordinating governmental interests.

5. Whether the Government sustained the burden imposed on it by this Court in those cases, of showing probable cause for the Subcommittee's summoning of petitioner as a witness and compelling his testimony in the First Amendment area.

6. Whether petitioner was denied the full and fair hearing and right of cross-examination guaranteed a de-

fendant in a criminal case by the Fifth and Sixth Amendments.

7. Whether the tribunal before which the contempts charged to petitioner were allegedly committed constituted a competent committee of the Senate within the purview of 2 U. S. C. 192, in light of the provision of section 134(c) of the Legislative Reorganization Act of 1946 that no Senate committee sit without special leave while the Senate is in session and the fact that the hearing here was held while the Senate was in session and without its special leave.

8. Whether an investigation by a Congressional committee into the content of newspapers, admittedly for the purpose of determining the manner in which public opinion was being influenced by such content, violates the freedom of press guaranteed by the First Amendment.

9. Whether petitioner was properly convicted under 2 U. S. C. 192, in view of the failure of the indictment to state (a) what the "topic under inquiry" before the Subcommittee was at the time of the alleged contempts, (b) how the questions with respect to which contempts were charged were pertinent to that subject matter, and (c) that petitioner's failure to answer them was willful.

10. Whether a defendant in a 2 U. S. C. 192 prosecution should be accorded the right to show the bias of Federal Government employee jurors and, on such a showing, to have an indictment returned by a grand jury composed in the majority of such jurors dismissed.

Constitutional Provisions, Statute and Resolution Involved

The Constitutional provisions involved are Article I, sections 1 and 9, clause 3; Article III, section 1; and the First, Fifth, Sixth, Ninth and Tenth Amendments.

The statutes involved are 2 U. S. C. 192, as amended (R. S. Sec. 102, as amended Act of June 22, 1938, c. 594, 52 Stat. 942) and 2 U. S. C. 190b (Legislative Reorganization Act of 1946, August 2, 1946, c. 753, Title I, § 134 (c), 60 Stat. 832). Senate Resolution 366, 81st Cong., 2d Sess., is also involved. The statutes and resolution involved are set forth in Appendix C, *infra*, p. 21.

Statement of the Case

Petitioner, a newspaper reporter employed by the New York Daily News, was indicted on November 26, 1956, for refusal to answer eight questions at a hearing held on January 5, 1960, before a tribunal purportedly sitting as the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary of the United States Senate (hereinafter "the Subcommittee") (R. 1-2). Only three of the questions on their face relate to communist activities; the remaining five indictment questions do not (*Ibid.*). The Count 1 question inquired whether petitioner was at the time a member of the Communist Party; the Count 8 question whether he had ever been a member; and the Count 2 question whether he had ever attended "Communist meetings".* The Count 3 question inquired whether petitioner then knew one "Marcella Hitschmannova"; and the succeeding questions whether he had flown "a considerable mileage in Central America and Latin America"; whether he had flown "a privately owned airplane, as distinguished from a military or naval airplane

* In addition to the other reasons noted in this petition, the Count 8 question cannot serve as a basis for a contempt conviction in view of its remoteness in time (*Bowers* v. *United States*, 92 U. S. App. D. C. 79, 202 F. 2d 447); and the Count 2 question because it is objectionable for vagueness (*O'Connor* v. *U. S.*, 99 U. S. App. D. C. 373, 240 F. 2d 404; see *Scull* v. *Virginia*, 359 U. S. 344).

• • • as a private citizen • • • in Latin and South America • • • [with] another person with you for a good part of the time"; who was "the person who accompanied you on that lengthy flight in Latin and Central America"; and when it was "you made this lengthy trip to Latin and Central America" (R. 2).*

Subpoenas issued prior to the trial, at petitioner's request, directed the chief clerks of the Subcommittee and of its parent Committee on the Judiciary to produce all records in the files of both bodies relating to petitioner and to the person designated "Marcella Hitschmannova", and all minutes of both covering the proceedings in which petitioner's hearing was held, particularly those relating to the summoning of petitioner (R. 8-10). On the Government's motion, these subpoenas were quashed by the trial court (R. 48-49).

A jury having been waived, the case proceeded to trial before the court. The Government's chief and only material witness was Mr. Julian G. Sourwine, associate counsel of the Subcommittee. Mr. Sourwine first testified concerning petitioner's appearance before the Subcommittee. He admitted that the Subcommittee "had no information directly placing • • • [petitioner] in the Communist Party" (R. 55), but referred to other information allegedly in the Subcommittee files which, so he said, caused it to summon petitioner as a witness and testified as to the purported purposes of the Subcommittee's inquiry (R. 51-55, 65). A substantial part of the Subcommittee's information, Mr. Sourwine said, had come from a "confidential informant" (R. 52, 83, 93, 94).

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* As the court below pointed out in *Bowers* v. *United States*, *supra*, the "Do you know a certain person?" type of question such as was the subject of Count 3 cannot serve as basis for a contempt conviction. The other questions here are plainly objectionable for vagueness. *O'Connor* v. *United States*, *supra*; *Scull* v. *United States*, *supra*.

Although the trial court permitted Mr. Sourwine to testify freely as to this alleged information, it barred petitioner's cross-examination as to the sources of the information and denied his request for inspection of the data, in so far as in writing (R. 82-83, 93, 94-95, 97, 99-100, 100-103). Petitioner's motion that, in view of the court's rulings, Mr. Sourwine's testimony in this regard be stricken was denied (R. 83-84, 113).

Opening his case, petitioner vainly reiterated his request for enforcement of the subpoenas previously quashed (R. 134). From the subpoenaed materials, petitioner offered to prove *inter alia* that the real purposes of the Subcommittee's inquiry were to control and fix the standards of employment of newspaper reporters and to influence the character and content of newspaper reporting, that it also desired in its investigation of petitioner to harass him and expose him to the contempt of the public and his associates, and that the Subcommittee was not acting with the least possible power in pursuance of any legislative function (R. 135-136). At the conclusion of the trial, the court found that the Subcommittee was duly constituted and inquiring into matters within its authority and for a legitimate legislative purpose, that the indictment questions were pertinent to the matter under inquiry and not ambiguous, that petitioner refused to answer them, and that he was properly informed by the subpoena of the purpose and reason for the Subcommittee's summoning of him (R. 136-137). The trial court, however, did not itself state the nature of the subject matter under inquiry. On these findings, the court held petitioner guilty on all counts of the indictment and on April 12, 1957, entered its judgment and imposed a sentence of $500 fine and three months imprisonment (R. 137, 11).

Notice of appeal to the Court of Appeals was filed on April 12, 1957 (R. 12). Before hearing argument, that Court awaited this Court's ruling in *Barenblatt* v. *United*

States, 360 U. S. 109. On June 18, 1960, the Court of Appeals affirmed petitioner's conviction (R. 143). Subsequently, it entered orders staying transmission of its judgment to the trial court pending the filing of this petition.

Reasons for Granting the Writ

1. This case presents to this Court the question whether Senate Resolution 366, 81st Cong., 2d Sess. (Appendix C, *infra*, p. 21), the grant of authority to the Internal Security Subcommittee of the Senate, is so vague as to invalidate that Subcommittee's power to compel testimony in the First Amendment area. This is the same question presented by the case of *Liveright* v. *United States*, in which a petition for a writ of certiorari is now pending. For a detailed statement of this question and as to the importance of its resolution by this Court, petitioner incorporates and respectfully refers the Court to the *Liveright* petition, pp. 7-9 *.

2. This case also presents the important question whether, when they indulge in an investigation intruding into the First Amendment area, Congressional committees must engage on a specifically delimited subject of inquiry, which is communicated to the witness, rather than on merely a general, roving inquisition. This Court's prior decisions appear to require such a particularization of subject matter; the court below is of a contrary view. Resolution of the problem is vital to protection of First Amendment freedoms.

Here, again, this same question is presented in *Liveright* v. *United States*, *supra;* and petitioner incorporates and

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* In view of the similarity of the instant case to the *Liveright* case, petitioner, in order to save expenses of printing, will, wherever appropriate, incorporate and refer the Court to portions of the petition in *Liveright*. Petitioner respectfully asks that the Court indulge him in this practice.

respectfully refers the Court to the discussion of the question in the *Liveright* petition, pp. 9-13. Here, too, petitioner was at no time sufficiently apprised of "the topic under inquiry" because the Subcommittee's investigation was not in the framework of any such specific inquiry. Mr. Sourwine, the Subcommittee's counsel, admitted at the trial that petitioner had never been told what the subject matter of the hearing was (R. 112-113). When, early in the hearing, petitioner inquired why a particular question was put, he was told that it was "to qualify you as a person of whom we can ask questions with respect to the persons who were on * * * [a Newspaper Guild] slate and the manner in which that slate was supported" (R. 18-19). But none of the indictment questions are relevant to such matters. And except for this, there was no indication to petitioner of the particular nature of the investigation.

That the Subcommittee was not limiting itself to any specific subject is plain from the disparate definitions of subject matter subsequently suggested by Mr. Sourwine at the trial (R. 54, 61-63, 84, 85). Indeed, the Government prosecutor conceded there was no specific "topic under inquiry". Rather, he said, the subject of the Subcommittee's investigation in this case was co-extensive with and no more particular than the broad powers set forth in Senate Resolution 366 (R. 130-133, *passim*), devoted to the primary purpose of locating "Communists" wherever they might be found (R. 133-134). And the trial court accepted the Government's position in this respect (R. 136).

It is noteworthy that neither of the lower courts (the Court of Appeals adopting the trial court's opinion, Appendix A, *infra*, pp. 17-18) has favored us with a statement as to just what, in its view, the "topic under inquiry" was, notwithstanding its readiness to charge petitioner with such knowledge because he had the temerity at the

hearing to read a long statement of objections prepared for him by his attorney.*

The short of the matter is that in the *Price* hearing, as in the *Liveright* hearing, the Subcommittee considered it quite unnecessary to limit its investigation to any particular "topic under inquiry". For, both hearings were held prior to this Court's rulings in *Watkins* v. *United States*, 354 U. S. 178, and *Barenblatt*, 360 U. S. 109, and so before the necessity for particularization of subject matter to justify Congressional intrusion into the First Amendment area had been made clear. The Subcommittee was here embarked, as it was then wont to do, on a roving inquiry under its diffuse charter of power. The belated and abortive effort of the court below to derive a "topic under inquiry" from this record is but another attempt at a post-*Watkins* reformation.

Review by this Court is necessary to correct the error below and to assure that the guides formulated in *Watkins* and *Barenblatt* are properly applied.

3. The decision below also presents the question whether in connection with his futile efforts at the trial to prove that there was no justification for the Subcommittee's in-

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* The Court of Appeals says: "If indeed appellant's [petitioner's] plane trip to South America was on a mission directed by the Communist Party, the Subcommittee was entitled to know that fact and the identity of his passenger would be highly relevant if the passenger was disclosed to be a person known to the Subcommittee to be a Communist Party member, courier or organizer." (Appendix A, *infra*, p. 19). But this "iffy" statement is of no help whatever in defining a "topic under inquiry" and suggests merely that persons taking plane trips to South America do so at the risk of Congressional investigation. The Subcommittee admittedly "had no information directly placing * * * [petitioner] in the Communist Party" (R. 55), at no time obtained any such information with respect to him (R. 85), and already had petitioner's sworn statement unequivocally denying participation in any Communist or espionage activities in connection wtih his plane trip to Latin America (R. 78-79).

quiry, petitioner was denied the full and fair hearing and right of cross-examination that the Fifth and Sixth Amendments accord; and, beyond that, important questions as to the quantum of proof which the Government must adduce to justify subordination of the individual's interest in privacy of belief, opinion and association to that of the state in investigating in aid of legislation and as to the nature and extent of the "probable cause" which, as *Barenblatt* (360 U. S. at 134) emphasized, must exist to tip the scales in favor of the state. These several questions are likewise presented in *Liveright, supra,* and petitioner incorporates and respectfully refers the Court to the pertinent discussion in the *Liveright* petition, pp. 13-15.

Neither the court below nor the trial court has pointed to any weighty national interests which could have been served by the investigation of petitioner. The record certainly discloses none. Although the trial court, over petitioner's objection, permitted the Government witness, Mr. Sourwine, freely to testify as to the purported information which led to the summoning and interrogation of petitioner (see R. 51-55), the court quashed subpoenas directed to the Subcommittee and its parent committee to produce such information, if any there was, and barred petitioner from cross-examining as to its sources or inspecting it (R. 10, 48-49, 82-83, 93-95, 98, 99-100).

For the same reasons noted in the *Liveright* petition (pp. 14-15), this case is quite different from *Barenblatt.* Here not only was no evidence offered of petitioner's participation in Communist activities, but the Subcommittee admittedly had no information placing him in the Communist Party (R. 55). The information which it did have, Mr. Sourwine said, had come from confidential sources; but petitioner was barred from inquiring into these sources. Thus, the trial court effectively precluded petitioner from examining into the credibility of the chief and only material Government witness and his alleged and

anonymous informant and into the purported reasons for the Subcommittee's summoning of petitioner and its interest in and need for interrogating him as to his private affairs.

Here, once more, the court below has sanctioned the invasion of First Amendment rights on the basis of the mere surmise and *ipse dixit* of a Congressional committee's counsel, immunized even from cross-examination, as to the existence of "probable cause", a matter whose significance *Barenblatt* made plain. Review by this Court is urgent to avoid this further unwarranted extension of the *Barenblatt* ruling made in disregard of the caveats clearly enunciated in that case.

4. This case further presents a question as to the construction of section 134(c) of the Legislative Reorganization Act of 1946 (Appendix C, *infra*, p. 21), which prohibits the holding of Senate committee hearings without special leave while the Senate is in session. The hearing at which petitioner allegedly committed contempt, however, was held while the Senate was in session and without its special leave (R. 111-112). The tribunal before which petitioner was charged with contempt consequently was not a competent committee and so cannot "be the instrument of criminal conviction". *Christoffel* v. *United States*, 338 U. S. 84, 90.

For a discussion of this point, petitioner incorporates and respectfully refers the Court to the statement in the *Liveright* petition, pp. 16-17.

5. In *Barenblatt*, the Court held that the mandate of the House Committee on Un-American Activities as it was applied in an investigation of communism in the field of education did not violate the First Amendment. While reserving our objections to that doctrine, it clearly does not support the ruling below. As already noted, the record does not disclose nor are we aware of the "topic under inquiry" here. The court below, however, by incorporating

its opinions in *Shelton* v. *United States*, No. 13737, C. A. D. C., June 18, 1960, pet. cert. pend'g., No. 246, O. T. 1960; and *Liveright* v. *United States*, *supra*, (see Appendix A, *infra*, p. 19), suggests that the subject matter of the investigation in this case was one into "efforts to influence American public opinion and the specific effort to use the press to implement these objectives" (*Shelton*, slip op. 7) or one into the "Communist Party strategy of placing its disciples in key positions in the fields of communications, newsgathering and reporting, education and other areas in which public opinion could be influenced" (*Liveright*, slip op. 6). Neither the Court of Appeals nor the trial court made any further inquiry into whether there were special circumstances as to petitioner which would justify holding that such an investigation was within the Subcommittee's power.*

When Federal courts so uncritically uphold a Congressional investigation into "efforts to influence American public opinion" and "areas in which public opinion could be influenced" by newspapers and other communications media, we submit it is urgent that this Court reexamine the *Barenblatt* doctrine and, at the very least, promptly place restrictions upon so radical an extension of the doctrine. For, to read Senate Resolution 366 so broadly is plainly to "violate the freedoms guaranteed by

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* The Subcommittee, of course, had no doubt of its authority generally to investigate into the content of press and other communications media. In a subsequent report as to this very inquiry, the Subcommittee stated, with respect to the nature of the investigation (Sen. Rep. 131, 84th Cong., 2d Sess.):

> "* * * Communists have made vigorous and sustained efforts to influence the American press and radio and to entrench their members in all other forms of mass communications, where, by *emphasis or omission of the written or spoken word*, it may be turned to the advantage of the conspiracy." (Emphasis supplied.)

the First Amendment—freedom to speak, publish and petition the Government". *United States* v. *Harriss*, 347 U. S. 612, 625; *United States* v. *Rumely*, 345 U. S. 41. As Mr. Walter Lippman observed at the very time petitioner and his fellow newspaper men were being questioned: "* * * In what former generation, if ever before in our history, has the Government claimed the power to examine and to pass judgment upon who shall work on newspapers? * * * Once it is the accepted principle that Congress has power to set up standards of newspaper employment, the inner spirit and the practical meaning of the First Amendment will be deeply impaired." N. Y. Herald Tribune, January 10, 1956. In these respects, the decision below in this case conflicts in principle with the *Harriss* and *Rumely* cases.

6. Finally, this case presents the two important problems, recurring in prosecutions under 2 U. S. C. 192, and also presented in *Liveright*, *supra*, relating to the form of the indictment and the presence of biased Federal Government employee jurors on the Grand Jury returning the indictment. As to these questions, petitioner incorporates and respectfully refers the Court to the statement in the *Liveright* petition, pp. 18-19.

7. In the instant case, even as in *Liveright* v. *United States*, *supra*, the propriety of the issuance of a writ is underlined by the grants of certiorari in *Wilkinson* v. *United States*, No. 37, O. T. 1960, and *Braden* v. *United States*, No. 54, O. T. 1960; and its importance is emphasized by the pendency of petitions in the other contempt of Congress cases decided by the court below on the same day as the instant case. See the *Liveright* petition, pp. 19-20.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix A

(Opinion of United States Court of Appeals for the District of Columbia Circuit)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13925

WILLIAM A. PRICE,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided June 18, 1960

MR. HARRY I. RAND, with whom MR. LEONARD B. BOUDIN was on the brief, for appellant.

MISS DORIS H. SPANGENBURG, Assistant United States Attorney, with whom MESSRS. OLIVER GASCH, United States Attorney, CARL W. BELCHER, LEWIS CARROLL, WILLIAM HITZ, and HAROLD D. RHYNEDANCE, JR., Assistant United States Attorneys, were on the brief, for appellee. MR. JOHN D. LANE, Assistant United States Attorney, also entered an appearance for appellee.

Before:

WASHINGTON, BASTIAN and BURGER,

Circuit Judges.

BURGER, *Circuit Judge*:

Appellant was convicted in the District Court for contempt under 2 U. S. C. § 192 (1958) for refusal to answer 8 questions [1] when he testified under subpoena before the Subcommittee on Internal Security, Senate Judiciary Committee. The hearings at which appellant testified were conducted pursuant to Senate Resolution 366 of the 81st Congress and Resolution 54 of the 84th Congress.*

Appellant appeared first in executive sessions of the Subcommittee and later in public sessions. At all times he was attended by counsel who was experienced in appearances before Congressional Committees conducting hearings of this general character. Appellant refused to answer the questions set forth in the indictment and explained his refusal in a prepared written statement which

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[1] Count One: "Are you, Mr. Price, a member of the Communist Party, U. S. A.?"

Count Two: "Have you ever attended Communist meetings?"

Count Three: "Do you, Mr. Price, know Marcella Hitschmanova?"

Count Four: "Did you, sir, fly a considerable mileage in Central America and Latin America?"

Count Five: "Is it not a fact, sir, that you did fly a privately owned airplane, as distinguished from a military or naval airplane—that you did so as a private citizen; that you flew in Latin and South America, and that during that flight you had another person with you for a good part of the time?"

Count Six: "Who was the person who accompanied you on that lengthy flight in Latin and Central America?"

Count Seven: "When was it you made this lengthy trip to Latin and Central America?"

Count Eight: "Have you ever been a member of the Communist Party? I asked you once earlier if you are now a member, and I will ask you whether you have ever been a member of the Communist Party?"

* The circumstances under which the appeals in this case and seven other contempt of Congress cases came on for hearing in this court appear in footnote 2 of the opinion in No. 13464, Gojack v. United States, decided this day.

he handed to the Subcommittee and counsel to be inserted in the record. From time to time he referred to the statement and embellished it as a basis for his refusal to answer questions. He consulted frequently with his counsel before responding or refusing to answer questions.

The District Court's opinion succintly deals with the case and we affirm the conviction on the grounds relied on by that court. In pertinent part that opinion is as follows:

> First, I hold that the committee was duly constituted and vested with authority to function on the occasion in question; that at the time the defendant appeared the committee was inquiring into a matter within its authority and that it had before it a legitimate legislative purpose; that the questions put were pertinent to the matter under inquiry; that the questions were not ambiguous in the light of what had transpired and in context; that the questions were properly put, and when there was a refusal to answer, after a statement as to why he refused, the defendant was directed to answer the questions, and he failed to do so.
>
> I have no doubt that the defendant was properly informed as to the purpose and reason which brought him before the committee. The subpoena of the committee put him on notice. In addition to that, the very careful legalistic memorandum prepared before he appeared clearly indicated that he was so advised and had the assistance of extraordinarily competent counsel. This Court, I might say, has had contact in a professional way with defendant's then counsel, Mr. Wittenberg, and personally knows him to be an able lawyer.
>
> I will further hold that the questions put were not properly and timely answered; that, in fact, there was no direct and clear answer to the questions put;

that the involved statement, made at a time substantially removed from the time the questions were put and in the manner in which the answer was made, was not truly responsive.

I believe that covers the necessary ingredients in the case; and they having been proved beyond a reasonable doubt, I do find the defendant guilty as to the counts set forth in the indictment in question: namely, Counts 1, 2, 3, 4, 5, 6, 7, and 8.

The formal statement relied on by appellant and filed with the Subcommittee warrants discussion in view of the comments of the Supreme Court in the *Barenblatt* case [2] concerning a statement filed by Barenblatt and containing recitals comparable to those in appellant's statement. Like Barenblatt, Price repeated that the Subcommittee could not lawfully inquire into his "political beliefs, [his] religious beliefs, or any other personal or private affairs and any association activities." He cited various decisions of the courts which were also referred to in his prepared statement, expressly disclaiming reliance on the absolute bar of the Fifth Amendment. Similarly, as in *Barenblatt*, the lengthy prepared statement, drafted as we are told with the aid of counsel who sat at his side throughout the hearings, discloses a complete awareness of the Subcommittee's purposes and objectives and its authority. As the District Court pointed out in its opinion, the pertinency of the questions to this subject matter is shown in part by their content and context particularly when viewed in light of the prepared statement. Unlike Watkins, Price made no specific or even general challenge to pertinency; under *Watkins* v. *United States*, 354 U. S. 178 (1957), where the witness has an awareness of the subject matter he is not entitled to an automatic explanation of pertinency. Appellant's statement to the Committee disclosed familiarity with numerous pertinent

[2] Barenblatt v. United States, 360 U. S. 109 (1959).

judicial opinions relating to congressional investigations and the rights and duties of the Congress and the witness. The questions put to appellant as to appellant's own personal activities were "clear beyond doubt." *Barenblatt* v. *United States,* 360 U. S. 109 (1959). If indeed appellant's plane trip to South America was on a mission directed by the Communist Party, the Subcommittee was entitled to know that fact and the identity of his passenger would be highly relevant if the passenger was disclosed to be a person known to the Subcommittee to be a Communist Party member, courier or organizer.

Appellant contends also that this inquiry was an impairment of the freedom of the press; that it impinged on appellant's First Amendment freedoms; that the Congress had no reasonable grounds to subpoena appellant as a witness; that his refusal to answer questions in executive sessions rendered him immune from prosecution for refusing to answer the same questions in public hearings; that the Subcommittee hearings were conducted while the Senate was in session and without express leave of the Senate; whether the indictment must recite the subject of the inquiry, the authority of the Subcommittee and the relation of the questions to the subject matter. Our discussion of these points in *Shelton* v. *United States,* No. 13737, and *Liveright* v. *United States,* No. 13871 (June 18, 1960), makes it unnecessary to deal in detail with these contentions here.

We also take note that assuming arguendo, but without conceding, some infirmity in the convictions with respect to certain of the counts of the indictment, Counts 1, 2, 7 and 8 are beyond any challenge and the sentences as to all 8 counts are concurrent.

Affirmed.

Appendix B

(Judgment)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 13,925
September Term, 1959
CRIMINAL 1216—56

WILLIAM A. PRICE,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

United States Court of Appeals
for the
District of Columbia
Circuit
Filed Jun 18 1960
Joseph W. Stewart
Clerk.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before:

WASHINGTON, BASTIAN and BURGER,
Circuit Judges.

JUDGMENT

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Circuit Judge BURGER.

Dated: June 18, 1960.

Appendix C

(Statutory Provisions Involved)

2 U. S. C. 192 (R. S. 102, as amended Act of June 22, 1938, c. 594, 52 Stat. 942) reads, as follows:

> "Refusal of witness to testify
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> "Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month or more than twelve months."

2 U. S. C. 190b (Legislative Reorganization Act of 1946, August 2, 1946, c. 753 Title I, § 134 (c), 60 Stat. 832) reads, in pertinent part, as follows

> "Authority of Senate standing committees and subcommittees; sitting while Senate or House in session
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> "(b) No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit, without special leave, while the Senate or the House, as the case may be, is in session."

(Senate Resolution Involved)

Senate Resolution 366, 81st Cong. 2d Sess., reads as follows:

> "Whereas the Congress from time to time has enacted laws designed to protect the internal security

of the United States from acts of espionage and sabotage and from infiltration by persons who seek to overthrow the Government of the United States by force and violence; and

"Whereas those who seek to evade such laws or to violate them with impunity constantly seek to devise and do devise clever and evasive means and tactics for such purposes; and

"Whereas agents and dupes of the world Communist conspiracy have been and are engaged in activities (including the origination and dissemination of propaganda) designed and intended to bring such protective laws into disrepute or disfavor and to hamper or prevent effective administration and enforcement thereof; and

"Whereas it is vital to the internal security of the United States that the Congress maintains a continuous surveillance over the problems presented by such activity and threatened activity and over the administration and enforcement of such laws.

"RESOLVED, That the Committee on the Judiciary, or any duly authorized subcommittee thereof, is authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effects of subversive activities in the United States, its Territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence."